



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 27, 1996

Mr. Barry R. Werner
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR96-2461

Dear Mr. Werner :

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103881.

The Dallas Police Department (the "department"), which you represent, received a request for information on October 30, 1996. Specifically, the requestor seeks incident reports for all rapes and murders in a certain Dallas area. You assert that the information relating to the murder case is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code, and that the incident reports involving rapes are excepted based on common-law privacy principles. The department did not request an open records decision from this office until November 20, 1996. Consequently, the department failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381. The presumption arising from the ten-day rule can be overcome only by a compelling demonstration that the information should not be released, e.g., where the information is made confidential by other law, or where third party interests are at issue. Open Records Decision No. 150 (1977).

In this instance, you have not presented this office with a compelling demonstration as to why the requested information should be withheld pursuant to sections 552.103 and 552.108. We therefore deem these exceptions to required public disclosure as being waived. We note, however, that some of the information at issue must be withheld from public disclosure pursuant to section 552.101 of the Government Code. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

Clearly, information pertaining to an incident of sexual assault raises an issue of common-law privacy. Open Records Decision No. 339 (1982). In Open Records Decision No. 339 (1982), this office concluded that "a detailed description of an incident of aggravated sexual abuse raises an issue of common law privacy," and therefore, any information tending to identify the assault victims should be withheld pursuant to common-law privacy. *See also* Open Records Decision No. 393 (1983).

You have not shown compelling reasons why the remaining information at issue should not be released. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 103881

Enclosures: Submitted documents

cc: Mr. Van Shaw
Shaw & Lemon
2723 Fairmount
Dallas, Texas 75201
(w/o enclosures)